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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT J. LITTLE TREE II SHEEHY and
SANDRA K. STRAIGHT TONGUE SHEEHY and
PATRICK J. LITTLE TREE III SHEEHY and
BOBBI J. RUNNING BROOK SHEEHY and
BILLIE J. SWEET RAIN SHEEHY and
CASEY J. LITTLE FAWN SHEEHY,
by and through ROBERT J. LITTLE TREE II and
SANDRA K. STRAIGHT TONGUE SHEEHY and
SHERRY J. RAGING THUNDER SHEEHY,
by and through ROBERT J. LITTLE TREE II and
SANDRA K. STRAIGHT TONGUE SHEEHY,

Petitioners,

-v-

06CV-0066A(Sc)
ORDER

NATIONAL APPEALS DIVISION and
FARM SERVICE AGENCY, and
UNITED STATES DEPARTMENT OF AGRICULTURE,
and HONORABLE MIKE JOHANNIS, Secretary of Agriculture,

Respondents.

On November 15, 2005, the United States Court of Appeals for the Second Circuit issued an Order transferring, upon respondents' motion, the instant Petition for Review of a final decision by the National Appeals Division to this Court, pursuant to 7 U.S.C. § 6999, which provides that jurisdiction for review of a final determination of the National Appeals Division rests exclusively in the district courts. (Docket No. 15, Attachment #12). The Second Circuit also denied as moot the remaining motions then pending in that Court, including petitioner's motion to proceed *in forma pauperis* (Docket No. 15, Attachment #4) and petitioners' motion for

an injunction and stay of acceleration and foreclosure and treasury offsets pending appeal¹ (*id.*, Attachment, #6). On January 26, 2006, the Clerk of the United Court of Appeals for the Second Circuit certified for transfer the documents originally filed in that Court and transferred the petition to this Court.

On February 14, 2006, this Court entered an Order that, *inter alia* (1) granted the applications to proceed *in forma pauperis* of petitioners Robert J. Little Tree Sheehy and Sandra K. Straight Tongue Sheehy ("parents"), (2) directed the remaining petitioners Patrick J. Little Tree III Sheehy, Bobbi J. Running Brook Sheehy, Billie J. Sweet Rain Sheehy, Casey J. Little Fawn Sheehy and Sherry J. Raging Thunder Sheehy ("children"), to the extent they were not infants, to file their own applications to proceed *in forma pauperis* if they wished to proceed as petitioners in this action, (3) advised the parents that they could not act as representatives of their infant children and could not act *pro se* on behalf of their infant children because they were not attorneys, *see Cheung v. Youth Orchestra Foundation of Buffalo*, 906 F.2d 59, 61 (2d Cir. 1990); Fed.R.Civ.P. 17(c), and (4) directed the Clerk of the Court to cause the United States Marshals Service to serve the Summons

¹Petitioners were advised that if they wished to re-file their motion for a preliminary injunction and stay of acceleration and foreclosure and treasury offsets, they could do so but must follow the procedures set forth in Federal Rules of Civil Procedure 65 and Local Rules of Civil Procedure 65.

and Petition for Review (Docket No. 15, Attachment #12) on the respondents. (Docket No. 16, Order).

Petitioners Billie J. Sweet Rain Sheehy, Patrick J. Little Tree III Sheehy, and Bobbi J. Running Brooks Sheehy have filed applications to proceed *in forma pauperis* (Docket Nos. 17-19) and proof of age (eighteen years or older) and, accordingly, their applications are granted and they can proceed as petitioners in this action *pro se*. All petitioners are reminded that they must each sign any and all pleadings, motions and the like filed in this matter because they each must act on their own behalf *pro se*. The parents cannot act *pro se* on behalf of their children in this matter.

Petitioners Robert J. Little Tree II and Sandra K. Straight Tongue Sheehy (parents) have also re-filed the Motion for a Preliminary Injunction and Stay of Acceleration and Foreclosure and Treasury Offsets (Docket No. 21) and a Motion for Appointment of Legal Representative and Co-Representative for their infant children, Casey J. Little Fawn Sheehy and Sherry J. Raging Thunder Sheehy (Docket No. 20).²

²The Court notes that in papers filed before the Second Circuit respondents moved to dismiss the children as petitioners, as an alternative to transfer, on the basis that none of the children named as petitioners were proper parties or had standing to challenge the determination of respondent National Appeals Division because they were not named parties to the administrative proceedings before the National Appeals Division and Farm Services Agency. Respondents are directed to address this issue in their responses to the Petition for Review, Motion for Preliminary Injunction or Motion for the Appointment of a Legal Representative.

As to the Court's initial Order directing the Clerk of the Court to cause the Marshals Service to serve the Summons and Petition for Review (Docket No. 16), the Court hereby vacates that part of its initial Order requiring service of the Summons and Petition for Review because Respondents have previously appeared in this matter in the Second Circuit and, therefore, need not be "served" again. Accordingly,

IT IS HEREBY ORDERED that that part of the Court's Order, entered February 14, 2006 (Docket No. 16), which directed the Clerk of the Court to serve the summons and petition for review on respondents is vacated;

FURTHER, the Clerk of the Court shall serve a copy of Petition for Review (Docket No. 15, Attachment #12), petitioner's Motions for a Preliminary Injunction and Stay of Acceleration and Foreclosure and Treasury Offsets (Docket No. 21) and Appointment of Legal Representative and Co-Representative for their infant children, Casey J. Little Fawn Sheehy and Sherry J. Raging Thunder Sheehy (Docket No. 20), and this Order on respondents' counsel of record, Stephen M. Reilly, U.S. Dept. of Agriculture, Office of General Counsel, 1400 Independence Avenue SW, Stop 1418, Washington, DC 20250, and the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202;

FURTHER, that respondents shall file responses to the Petition for Review, petitioner's Motion for a Preliminary Injunction and Stay of Acceleration and Foreclosure and Treasury Offsets (Docket No. 21) and petitioner's Motion for Appointment of Legal Representative and Co-Representative for their infant children, Casey J. Little Fawn Sheehy and Sherry J. Raging Thunder Sheehy (Docket No. 20), no later than **60 days** from service of this Order; and

FURTHER, that petitioners Billie J. Sweet Rain Sheehy, Patrick J. Little Tree III Sheehy, and Bobbi J. Running Brooks Sheehy are granted permission to proceed *in forma pauperis*.

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESKA
United States District Judge

Dated: March 23, 2006
Rochester, New York